



# City of Columbus

## Attorney for the City of Columbus

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May 20, 2021

Joint City-County Airport Board  
Columbus City Hall  
408 East 1<sup>st</sup> Avenue North  
Columbus, MT 59019

Re: Nomination of Hardin Graham for Aviation Representative for  
the Joint City-County Airport Board.

Dear Airport Board Members:

I have received a copy of the local aviation community's written nomination (dated May 7, 2021) therein nominating Hardin Graham for the vacant Aviation Representative position for the Joint City-County Airport Board. As you know, Mr. Graham serves as the Airport Manager for the Woltermann Memorial Airport. I have been asked to ensure that no conflicts would exist if Mr. Graham were nominated and appointed to the vacant position for the Airport Board. For the following reasons, I respectfully advise that the Airport Board does not submit a formal recommendation to the Columbus City Council and Stillwater Board of County Commissioners for approval of Mr. Graham's nomination.

The Montana Supreme Court has recognized that two offices are incompatible when one has the power of removal over the other, when one is in any way subordinate to the other, when one has the power of supervision over the other, or when the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both. See 47 Op. Att'y Gen. No. 19 (1998) (citing *State ex rel. Klick v. Wittmer*, 50 Mont. 22, 144 P. 648 (1914)). The doctrine of incompatible public officers eliminates the public policy concerns inherent in the simultaneous holding of multiple public offices or positions by:



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- (1) preventing multiple position-holding, so that offices and positions of public trust to not accumulate in a single person;
- (2) preventing individuals from deriving, directly or indirectly, any pecuniary benefit by virtue of their dual position-holding;
- (3) avoiding the inherent conflict which occurs when an employee's position has revisory power over the employee's superior in another position; and
- (4) ensuring, generally, that public officeholders and public employees discharge their duties with undivided loyalty.

See *Id.* (citing 46 Op. Att'y Gen. No. 26 (1996)) (internal citations omitted). Furthermore, the doctrine of incompatible public offices applies to both compensated and non-compensated public officers or positions. Specifically, in 47 Op. Att'y Gen. No. 19 (1998), the Montana Attorney General concluded that said doctrine precluded a hospital district employee from simultaneously serving as a trustee of the hospital district even though the latter position was not compensated.

The Montana Supreme Court's most recent analysis of the doctrine of incompatible public offices can be found in *Zunski v. Frenchtown Fire Dept. Bd. of Trustees*, 2013 MT 258, 371 Mont. 552, 309 P.3d 21. In *Zunski*, the Frenchtown Rural First District (FRFD) started searching for a new fire chief after its chief had resigned. Subsequently, the board held a special session wherein it appointed one of its own trustees to simultaneously serve as the interim fire chief. When the appointment was legally challenged, on appeal, the Supreme Court held that the FRFD violated the doctrine of incompatible public offices by appointing one of its board trustees to simultaneously serve as the interim fire chief.

Here, Mr. Graham serves as the Airport Manager for the Woltermann Memorial Airport. Per the Columbus Airport Rules, the Airport Manager position is appointed by the governing bodies upon recommendation by the Airport Board. Thus, the Airport Board exercises supervisory control over the Airport Manager position. Since the Airport Board exercises supervisory control over Mr. Graham as the Airport Manager, it would violate the doctrine of incompatible public offices for him to simultaneously serve on the Airport Board. See *Zunski*, ¶ 20 ("The doctrine provides that a person cannot hold an office over which the person exercises



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supervisory control.") Despite Mr. Graham's impressive qualifications for the vacant Aviation Representative position, for the reasons previously outlined, I conclude that he cannot simultaneously serve as the Airport Manager as well as an Airport Board member.

Based on the foregoing facts and applicable law, I respectfully advise that the Airport Board does not submit a formal recommendation to the Columbus City Council and Stillwater Board of County Commissioners for approval of Mr. Graham's nomination to the vacant Aviation Representative position. Please feel free to contact me if you have any further questions.

Sincerely,

Ryan C. Addis  
Columbus City Attorney